



---

# **Sole Source Commercial Item Pricing DAU Acquisition Insight Days 24 Mar 14**

Leslie Overturf, Cost/Price Analyst  
Air Force Materiel Command HQ  
Pricing Division (AFMC/PKF)



# Briefing Overview

---

- **Defining Commercial Items**
- **Commercial Item Determination (CID)**
  - **Prime Contracts**
  - **Subcontracts/Suppliers**
  - **Additional Requirements**
- **Determining Price Reasonableness**
  - **Obtaining Data**
  - **Price Analysis**
  - **Cost Analysis of Cost Data**
  - **Negotiations Tips**



# Briefing Overview

---

- ➔ **Defining Commercial Items**
  - **Commercial Item Determination (CID)**
    - Prime Contracts
    - Subcontracts/Suppliers
  - **Determining Price Reasonableness**
    - Price Analysis
    - Cost Analysis of Cost Data
    - Negotiations Tips



# Defining Commercial Items (FAR 2.101)

---

**(1) Any item other than real property that is of a type customarily used for non-governmental purposes and:**

- Has been sold, leased or licensed to general public or
- Has been offered for sale, lease or license to general public

**(2) Any item that evolved from item described above, through advances in technology or performance, & that is not yet available in commercial marketplace, but will be available in commercial marketplace in time to satisfy Government's delivery requirements**

*"General public" does not include Federal, state, local, or foreign government (DFARS 202.101, Pub. L. 110-181)*



# Defining Commercial Items

---

**(3) Any item that would satisfy criterion expressed in previous 2 definitions but for:**

- **Modifications *of a type* customarily available in commercial marketplace; or**
- **Minor mods *of a type* not customarily available in commercial marketplace made to meet Federal requirements**
  - Minor modifications do not significantly alter the **nongovernmental** function or essential physical characteristics of item or component, or change purpose of process



# Defining Commercial Items

---

**(4) Any combination of items meeting requirements of above 3 definitions that are *of a type* customarily combined and sold in combination to general public**

- **Lessons Learned**

- A significant portion of “defense” related items we procure are not Commercially Available off-the-shelf (COTS) because they are not sold in substantial quantities in the same form sold in the commercial marketplace
- “Of a type” items require careful consideration and doing an assessment can add time to the schedule



# Defining Commercial Items

---

- **Lessons Learned**

- **You can't always rely on previous commercial item determinations (CIDs)**
  - There have been numerous instances of CIDS being overturned
  - Evaluate reasonableness/currency of previous CIDs before utilizing
- **Do not make your determination in a vacuum - look at different programs using same or similar items**
  - Are you buying something that is truly new? Chances are it has been purchased before
  - DCAA/DCMA are good resources for doing research
  - Look within AF, and even at other services
  - What we buy at prime level sometimes shows up as a subcontract
  - Take a corporate position with other Government customers



# Defining Commercial Items

---

- **Lessons Learned**

- **To determine whether an item is “of a type”, you should get input from your technical folks-some potential questions to address:**
  - Is the primary purpose of the government item a non-governmental purpose?
    - If no, not commercial
  - What are the essential physical characteristics of the “of a type” item and how similar are they to the commercial item?
    - As items become less similar, commercial classification becomes less likely
    - Is the “of a type” item coming down the same production line as the commercial item?
    - If so, helps commerciality assertion





# Defining Commercial Items

---

- **Lessons Learned**
  - **To determine whether an item is “of a type”, you should get input from your technical folks on the following areas:**
    - Is the “of a type” item qualified to the same standards as the commercial item?
      - If standards are significantly different, may diminish argument for commerciality
    - Is the commercial item assertion related to presence of COTS in the end item?
      - Remember the CID can be made at the component level, subsystem level, or system level
    - Is the item controlled under International Traffic in Arms Regs?
      - If so, might beg question of commerciality
  - **Look at all the above in their entirety**



# Defining Commercial Items

---

- **Lessons Learned**

- **To determine whether a modification is “of a type customarily available in the commercial marketplace”, you should evaluate the following:**
  - How similar is the modified item to other modified items sold in the commercial marketplace?
    - If there are no similarities, the mod is likely not “of a type”
  - Does the supplier perform similar mods for non-government customers?
    - If not, the mod is likely not “of a type”
  - Are there differences in the manufacturing processes used to perform the modification for the government and non-government customers?
    - Significant differences indicate the mod is not “of a type”
- **Look at all of the above in their totality**



# Defining Commercial Items

---

- **Lessons Learned**

- **To determine whether an “of a type” modification not customarily available in the commercial marketplace is minor, obtain technical assistance to address primary considerations in 2.101:**
  - Does the modification significantly alter the nongovernmental function?
    - If yes, not a minor mod
  - Does the modification significantly alter the essential physical characteristics of the item?
    - If yes, not a minor mod
  - Does the modification significantly alter the purpose of a process?
    - If yes, not a minor mod



# Defining Commercial Items

---

- **Lessons Learned**

- **To determine whether an “of a type” modification not customarily available in the commercial marketplace is minor, also review the guideposts in 2.101:**
  - What is the value of the mod versus the value of the final product?
    - If mod value is a significant percentage, may not be minor
  - What is the size of the mod versus the size of the final product?
    - If mod size is significantly different, may not be minor
- **Look at all of the above in their totality**



# Defining Commercial Items

---

**(5) Installation services, maintenance services, repair services, training services, other services if**

- In support of commercial item, regardless of whether services are provided by same source or at same time as the item; and
- Source of services provides similar services contemporaneously to general public under terms & conditions similar to those offered to Government

**(6) Services of a type offered and sold competitively in *substantial* quantities in commercial marketplace based on established catalog/market prices for specific tasks performed/outcomes to be achieved under standard commercial terms and conditions**



# Defining Commercial Items

---

**(7) Any item, combination of items, or service in paragraphs (1) through (6) notwithstanding the item is transferred between separate divisions, subsidiaries, affiliates of a contractor**

**(8) Nondevelopmental item, if agency determined item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments**



# Defining Commercial Items

---

- **Examples**
  - **Commercial**
    - Repair services for commercial items
  - **Both Commercial & Noncommercial – note these are groups of items and commerciality varies, depending on the specific item**
    - Engines – Cargo versus Fighter
    - Avionics Related items



# Defining Commercial Items

- **Examples**
  - **Proposed as Commercial, but rejected\***
    - Infrared Countermeasures
  - **No Longer Commercial**
    - JPATS
    - Trainer Simulator Services
    - C130J
    - Tanker 767 Lease

*\* While the system was not commercial, there were underlying components considered to be commercial*





# Briefing Overview

---

- **Defining Commerciality**



## **Commercial Item Determination (CID)**

- **Prime Contracts**
- **Subcontracts/Suppliers**
- **Additional Requirements**

- **Determining Price Reasonableness**

- **Price Analysis**
- **Cost Analysis of Cost Data**
- **Negotiations Tips**



# **Commercial Item Determination**

---

- Contractor may claim commerciality at prime or subcontract level
- CID required to validate the assertion
  - Contracting Officer's Role
  - Prime Contractor's Role



# CID – Prime Contract

---

- **Contracting officers shall fully document market research and rationale supporting commercial item determinations:**
  - **For commercial acquisitions exceeding \$1M the contracting officer *shall* (DFARS 212.102):**
    - Determine in writing that the acquisition meets the commercial item definition in FAR 2.101
    - Include the written determination in the contract file; and
    - Obtain approval at one level above the CO when a commercial item determination relies on subsections (1) (ii), (3), (4), or (6)



# CID – Prime Contract

---

- **Contracting officers shall fully document market research and rationale supporting commercial item determinations (cont'd):**
  - **DFARS PGI 212.102, CO shall ensure file documents market research and rationale supporting commercial item definition has been met**
    - Particular care taken to document mods “of a type” and items offered for sale but not yet sold
    - Clearly detail particulars of modifications and sale offers
    - When items lack market pricing history, additional diligence to determination prices are fair and reasonable



# CID – Prime Contract

---

- **The written CID should contain the following at a minimum (AFMC MP 5312.201-90)**
  - Description of supply or services
  - Basis on which the supply/services meets the FAR 2.101 definition of commercial or justification via previous determination
  - Basis on which commercial item satisfies requirement or impact of current market conditions on previous determination
  - CO's signature and date

*Remember-- CIDs over \$15M are reported to DPAP and ultimately Congress (DFARS 215.403-1) at both the prime and sub levels*



# **CID – Subcontract**

---

- **Prime Contractor shall determine whether subcontract meets commercial item definition (DFARS 244.402)**
  - **Contractors are expected to exercise reasonable business judgment in issuing CIDs IAW guidelines for conducting market research (FAR Part 10)**



# CID – Subcontract

- **CO has ultimate responsibility for CID at prime & subcontract/supplier levels (DFARS 244.402 and FAR 15.403-1 (c)(3))**
  - **Ensure agreement with prime contractor determination**
    - If Contractor's determination of subcontractor commerciality is inadequate or invalid, CO may reject
    - CO should consider, but is not bound by previous CIDs by other government officials (AFMC MP 5312.201-90 provides minimum components CO will need to document for determinations based on prior determinations)

*If not commercial and another TINA exception does not apply,  
Contractor will have to provide certified cost or pricing data*



# Additional Requirements for Major Weapon Systems

---

- **Under DFARS 234.7002, DoD major weapon systems “may” be treated as commercial if**
  - **Secretary of Defense determines**
    - Major weapon system is a commercial item under FAR 2.101 and
    - Such treatment is necessary to meet national security objectives
  - **Offer has submitted sufficient information to evaluate through price analysis the reasonableness of the price for the system; and**
  - **Congressional defense committees notified at least 30 days in advance**





# **Additional Requirements for Major Weapon Systems**

---

- **Under DFARS 234.7002, Subsystems, Components & Spare Parts of major weapon systems “may” be treated as commercial if**
  - **Intended for a major weapon system (or subsystem if component/spare) being acquired as commercial item or**
  - **CO determines in writing**
    - Subsystem, component, or spare part is a commercial item and
    - Offeror has submitted sufficient information to evaluate through price analysis, price reasonableness of subsystem, component or spare part



# Additional Requirements for Major Weapon Systems

---

- **To extent necessary to make determination, CO may request offeror provide**
  - Prices paid for same or similar commercial items under comparable terms and conditions by both government and commercial customer and
  - Other relevant info regarding the basis for price or cost, including info on labor costs, material costs, and overhead rates, if CO determines the above is not sufficient to determine price reasonableness

*CO can reject a commercial item assertion or determination if cannot determine fair & reasonable pricing for item due to a lack of sales or other than cost & pricing data*



# **Additional Requirements for Certain Services**

---

- **Under FAR 15.403-1(c)(3)(ii) Services “of a type” but not sold competitively in substantial quantities in commercial marketplace “may” be considered commercial if**
  - **CO determines in writing offeror has submitted sufficient information to evaluate price reasonableness**



# Additional Requirements for Certain Services

---

- In order to make determination, CO may request offeror provide
  - Prices paid for same or similar commercial items under comparable terms and conditions by both government and commercial customer and
  - Other relevant info regarding the basis for price or cost, including info on labor costs, material costs, and overhead rates, if CO determines the above is not sufficient to determine price reasonableness

*CO can reject a commercial item assertion or determination if cannot determine fair & reasonable pricing for item due to a lack of sales or other than cost & pricing data*



# Briefing Overview

---

- **Defining Commerciality**
- **Commercial Item Determination (CID)**
  - Prime Contracts
  - Subcontracts/Suppliers
  - Additional Requirements



## **Determining Price Reasonableness**

- Obtaining Data
- Analysis Methods
- Price Analysis
- Negotiations Tips



# Determining Price Reasonableness

## Introduction

- In a Sole Source Environment, determining commercial item prices to be fair and reasonable can be very challenging
  - Cannot rely on Adequate Price Competition to determine reasonableness due to sole source designation
  - Prohibited from requiring *certified* cost or pricing data to determine reasonableness with the exception of minor, non-commercial modifications
  - Some companies resist providing any data, including sales data and cost information
  - “Of a type” items can be especially difficult to price due to differences between the proposed and commercial items - the marketplace may not drive reasonableness

*The effectiveness of the price analysis will depend on what data the Government is able to obtain to conduct the analysis*



# Obtaining Data

- **FAR 15.402 Order of preference for obtaining data when certified cost or pricing data are not required:**
  - **Information related to prices (market or previous contract prices) relying on information available:**
    - First from within the Government
    - Secondly, obtained from sources other than the offeror
    - Lastly, obtained from the offeror to include at a minimum appropriate information on the prices at which the same or similar items have been sold adequate for evaluating the reasonableness of the price
- **Cost data to the extent necessary for the CO to determine a fair and reasonable price**

*CO should look internally and perform market research, however, the offeror is still required to provide data when necessary*



# Obtaining Data

- If the CO cannot obtain adequate information from sources other than the offeror, the CO shall require submission of data other than certified cost or pricing data from the offeror that is adequate to determine a fair and reasonable price (FAR 15.403-3 (a) (1) (ii))
  - Unless the prices are based on adequate price competition or set by law or regulation, the CO must require that the information submitted by the offeror include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold, adequate for determining price reasonableness (FAR 15.403-3 (a) (1) (iv))
    - Sales data must be comparable to the quantities, capabilities, specs, etc., of the product or service proposed and the CO must determine if this data is sufficient to determine reasonableness (PGI 215.403-3)

*What if there is no sales data available or available data is not comparable?*





# Obtaining Data

- **In some cases, commercial sales are not available & there is no other market information for determining fair and reasonable prices (PGI 215.404-1(b))**
  - Especially true for supplies or services that have only been offered for sale or purchased on a sole source basis with no prior commercial sales upon which to rely
    - In this case, the CO must require the offeror to submit whatever cost data is needed to determine price reasonableness (but accept contractor's format consistent with their records)
    - This would include other relevant information regarding the basis for price or cost including information on labor costs, material costs, and overhead rates (FAR 15.403-1 (c)(3)(ii)(C)) (may look like certified data or be at a higher level)

*Remember-for major weapon subsystems CO must determine offeror has submitted sufficient information to evaluate price reasonableness as part of the CID (DFARS 234.7002)*



# Obtaining Data

- **Minor Modifications of a type not customarily available in the commercial market place -**
  - **While commercial items are exempt from TINA, DOD acquisitions that meet the minor modification definition at FAR 2.101 para. (3)(ii) will require the PCO to get *certified* cost or pricing data if:**
    - ...the total price of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining certified cost or pricing data in 15.403-4 or 5% of the total price of the contract at time of award

*Even if the CO determines the item is still commercial despite the minor, non-commercial mod, certified cost or pricing data may still be required depending on the value of the modification as compared to the total acquisition*



# Analysis Methods

- **Two methods of analysis to establish price reasonableness when reviewing data**
  - **Price Analysis (primary method, since it is required for commercial items)**
    - Analysis of the total price
    - Used when making comparisons to same/similar items
  - **Cost Analysis (when CO cannot obtain sufficient data to perform price analysis – FAR 15.404-1(b))**
    - Reasonableness is based on evaluation of cost information received from offeror (labor hours, material prices, rates etc.)
    - Used to evaluate data other than certified cost or pricing data to determine reasonableness when it cannot be determined through price analysis alone (FAR 15.404-1(a)(4))
    - Used to evaluate minor modifications of a type not customarily available that exceed the greater of TINA or 5% of acquisition



# What is Price Analysis?

---

## **FAR 15.404-1 (b)**

- **Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit**
- **FAR examples of price analysis techniques**
  - Comparison of proposed prices received in response to the solicitation (adequate price competition does not normally apply in the context of sole source negotiations)



# What is Price Analysis?

- **FAR Examples of price analysis techniques (cont'd)**
  - Comparison of previously proposed prices & previous Government and commercial contract prices with current proposed prices for the same or similar items, if both the validity of the comparison & the reasonableness of the previous prices can be established (preferred method by FAR)
    - If significant time lapses from last acquisition, significantly different terms & conditions, or the reasonableness of the prior price is uncertain, then the prior price may not be a valid basis for comparison
    - Expert technical advice should be obtained when analyzing “similar items”, or commercial items that are “of a type” or require minor modifications, to ascertain the magnitude of changes required to assist in pricing the changes



# What is Price Analysis?

---

- **FAR Examples of price analysis techniques (cont'd)**
  - Parametric Estimating Methods (e.g. leased warehouse space) may highlight significant inconsistencies that warrant additional price inquiries
  - Comparison to competitive published price lists, published market prices, similar indexes, and discount/rebate arrangements (common method for commercial items-may not be practical for sole source or “of a type” commercial items)
  - Comparison to independent Government estimates (this method is more common in source selection and is not a common method used for analyzing commercial items, so insight into Gov’t estimate would be key)



# What is Price Analysis?

- **FAR Examples of price analysis techniques (cont'd)**
  - Comparison to prices obtained through market research for same/similar items (determine if these are offered prices or prices paid)
  - Analysis of data other than certified cost or pricing data provided by offeror (this could be sales data or cost information depending on the commercial item you are buying)

*All prices you select for comparison must be fair & reasonable*



# Price Analysis Steps

---

- **Select Appropriate Prices for Comparison**
- **Identify Factors that Affect Comparability**
- **Determine Impact**
- **Adjust prices**
- **Compare Prices**
- **Negotiate**





# Select Appropriate Prices for Comparison

- **Prices obtained from within the Government**
  - **Government/Commercial Contracts for same/similar items\***
    - Your own organization – do not stop here!
    - Your service, e.g. Air Force
    - Other services, e.g. Navy
    - Other agencies, e.g. DLA, GSA
    - DCAA/DCMA may be able to assist in helping you ID other government customers & obtain sales data
      - Best bet to help find commercial sales
      - CBAR may eventually be very helpful in this area

*\* Must verify sufficient analysis was performed to determine previous price fair & reasonable & were for similar quantities (PGI 215.403-3)*



# Select Appropriate Prices for Comparison

- **Prices obtained from other sources**
  - **Commercial price lists, catalogs, commodity market prices, similar indexes and discount and rebate arrangements (market research)**
    - Haystack (note this would be government prices paid), trade journals, product evaluations, Thomas Register, Institute for Supply Management (ISM/NAPM)
    - Are the published prices accessible by the public? Are the published prices actually paid by other customers? Are discounts applicable?
  - **While market research may be helpful for commercial items with multiple buyers & sellers, the market may not necessarily establish reasonable “of a type” sole source prices**
    - Practically speaking, it can be difficult to find relevant sales data/ market info from other sources for “of a type” commercial items
    - Is the commercial marketplace driving a fair & reasonable price for items sold only to the Government?



# Select Appropriate Prices for Comparison

---

- **Information obtained from the offeror**
  - **When requesting “info other than cost or pricing data”, must limit requests for commercial data from the offeror in accordance with FAR 15.403-3(c) (2):**
    - Must be sales data relating to same/similar items during a relevant time period
    - Must be info in the form regularly maintained by the offeror
    - Contractor may require non-disclosure agreement



# Select Appropriate Prices for Comparison-Lessons Learned

- **Use due diligence when relying on prior negotiated contracts**
  - **Always review how prior prices were determined reasonable before using as basis for future prices**
    - Relying on prior price analysis without knowing context/goodness is common theme in oversight reports
    - For sole source commercial items, the PCO must be extra diligent when relying on prior Government prices paid
      - At a minimum the PCO must review the price history & discuss with the agency that previously bought the item and document these discussions in the contract file (DFARs PGI 215.403-3 (4))



# Select Appropriate Prices for Comparison-Lessons Learned

- **Use due diligence when relying on prior negotiated contracts (cont'd)**
  - **Watch out for lengthy Long Term Agreements at the sub level that may not reflect current market conditions or competitive market**
    - Especially true for technology products
  - **Ensure the Prime Contractor determined price reasonableness for subcontractor commercial items**
    - For “of a type” items they should engage their technical personnel just like the Government would



# Select Appropriate Prices for Comparison-Lessons Learned

- **Use diligence when analyzing sales data and catalog prices**
- **Did the Contractor provide all relevant sales data?**
  - Relevant sales data would include purchases from all entities in a reasonable period of time
    - If sales are vast-enlist DCAA/MA assistance in reviewing sales data and to help you ensure you have a good representative sample
  - Do not accept redacted sales data
    - Have suppliers submit un-redacted data directly to the Government
- **Scrutinize Catalog Prices-**
  - Request sales data to accompany catalog prices-compare catalog price versus price actually paid-discounts very common in private/commercial marketplace



# Identify Factors that Affect Comparability

- Understand primary factors that affect price
- Factors that can impact price
  - Quantity
    - Is quantity a major driver? Generally speaking, you would expect a price break for large quantities, although there may become a point where economies of scale have been reached
    - Most training tells you to obtain prices for the same quantities so that unit prices are comparable
      - Good example is when GSA schedule is for a quantity of 1, the associated unit price would not be reasonable for a greater quantity
      - We do have an example where commercial customers were getting lower prices for lower quantities –do not just consider quantity alone-other factors could have an impact
      - Make sure you have data you need to make adjustments



# Identify Factors that Affect Comparability

---

- **Factors that can impact price**
  - **Timing of Acquisitions (inflation)**
    - Typically considered a driver of price
    - While we normally think the price goes up over time, there are some markets where it could go down
    - Lesson Learned: large lapses in time from the most recent acquisition may render the comparison not valid as there are too many factors that can affect price, e.g. changes in supply and demand not captured by inflation
  - **Geographic Location – labor rates, etc.**
    - This becomes very relevant in commercial services
    - Some locations may be more expensive than others and that should be considered in your analysis





# Identify Factors that Affect Comparability

---

- **Contract Payments (financing)**
  - Time Value of Money affects price, e.g. if we pay additional financing we would expect a price break
  - Remember contract financing terms must comply with FAR 32.2 & associated regs
    - Allow financing only when appropriate/customary in the commercial marketplace
    - Advance Payments cannot exceed 15% by statute (FAR 32.202-1)
    - Installment Payments are restricted to 70% -FAR 32.206)
      - Shall not be used for DOD contracts unless market research established as appropriate and customary in commercial marketplace (DFARS 232.206 (g))



# Identify Factors that Affect Comparability

---

- **Other Terms & Conditions that affect price, e.g. extended warranty may increase price (which would require careful analysis)**
- **Delivery Schedule – standard versus compressed**
- **Customer Status – rebates/discounts, e.g. most favored customer**
- **Distribution options – Free on Board (FOB) point – who pays shipping?**
- **Production Trends/Improvements**
- **Other Market Circumstances**
  - Level of Supply/Demand (including competition)
  - Laws & Regulations
  - Product design changes, technological advances
  - Level of Resources (surplus v. shortages)-labor, energy, raw materials, etc.



# Identify Factors that Affect Comparability

---

- **Content Differences - “Of a type”/“modified” commercial**
  - Will likely require a technical analysis to account for differences to assist in pricing – should cover all differences in the item, mfg. process, etc.
    - Content/Specs
    - Functionality
    - Weight/Volume
      - Is proposed item larger, smaller
      - Aluminum, titanium, etc. per pound
    - Manufacturing Processes
      - Setup times, automation (use of robotics), production time, standardized tooling, etc.
    - Tolerances/Robustness
      - Proposed item is ruggedized, stringent specs as opposed to commercial variant



# Identify Factors that Affect Comparability

---

- **Content Differences-“Of a type” and “modified” commercial items-cont’d**
  - Fabrication
    - Casting, finishing differences
  - Types of Materials
    - Steel, titanium, aluminum, variety in coatings
  - Software/Licenses
    - Specialized software, ITAR compliance
- **Lessons Learned:**
  - If technical evaluation reveals vast differences in content between the commercial and of a type item, you may need to reassess whether the item should be considered of a type
  - Even with a good technical evaluation elaborating on content differences, it may be difficult for a technical evaluator to determine dollar impact of these differences without cost data



# Adjust Prices Selected for Comparison

---

- **Possible Techniques Include**
  - **Index Adjustments (inflation/deflation)**
    - Global Insight-widely-accepted source for indices by industry
  - **Quantity Adjustment Curves**
  - **Present Value (e.g. adjust for financing differences)**
  - **Simple Cost Estimating Relationships (CERs), e.g. \$/pound**
  - **Regression analysis**
    - Causal relationship that makes sense
    - Simple (simple independent variable) or multiple
    - Cost improvement curves (learning)
    - Ex of independent variables-production rate, quantity
  - **Cost Analysis**
    - Cost analysis of modification (when appropriate) added to baseline
    - Cost analysis of other than certified cost or pricing data



# **Compare Adjusted Prices to Proposed Prices**

---

- **Once you complete your analysis assess how your evaluated price compares to the proposed**
- **If prices are substantially different, one of two things may be happening**
  - Proposed price is not reasonable and you need to negotiate
  - Issues with analysis
    - This may require contractor providing additional info
    - Example: contractor provided “cost info” to defend proposed price as reasonable
- **Your final analysis produces what you consider a fair and reasonable price-negotiate any differences**



# Negotiation Tips

---

- **Commercial Items are negotiable**
- **If you have major issues with subcontractor prices, you will want to notify the prime in advance**
- **Go for reasonable business deal, considering price, delivery, terms, financing, etc.**
- **You may wish to engage your technical folks to help you defend your position**
- **Use market research to determine buying power in comparison to commercial market**



# Negotiation Tips

---

- **Enlist support of your management before you go into negotiations**
- **Always think ahead – is there another way to procure what you need? Can you develop a second source?**





# Conclusions

---

- **A commercial designation does not relieve the CO from determining price reasonableness nor does it relieve the offeror from providing data in support of that determination**
- **Sole Source/Of a Type items required extra work and diligence on our part, especially when there is no commercial marketplace driving price reasonableness**
- **It is critical we don't evaluate commercial items in a vacuum – even if it is sole source that does not mean you are the only government customer buying the item**



# Questions?

---





# Back-Up Charts



# **Still can't determine reasonableness?**

- **Proposal Analysis Techniques (PGI 215.404-1)**
  - **The objective is to ensure a fair and reasonable price. When the CO needs information that the offeror will not furnish, follow these steps in sequence to resolve:**
    - The CO should make clear what is required and why, and be flexible in requesting the data (existing formats)
    - If the offeror refuses, elevate within the contracting activity
    - Contracting activity management, along with the CO, shall discuss with the offeror's management
    - Elevate to the HCA for a decision in accordance with FAR 15.403-3(a)(4) if the offeror still refuses



# **Still can't determine reasonableness?**

---

- **As specified in Section 808 of Pub. L. 105-261, an offeror who does not comply with a requirement to submit information for a contract or subcontract is ineligible for award unless the HCA determines that it is in the best interest of the Government based on consideration of the following:**
  - The effort made to obtain the data
  - The need for the item or service
  - Increased cost or significant harm to the Government if the award is not made (FAR 15.403 (a) (4) )



# **Still can't determine reasonableness?**

- **Proposal Analysis Techniques (cont'd) (PGI 215.404-1)**
  - **The CO shall document the contract file to describe**
    - The data requested and the CO's need for that data;
    - Why there is currently no other alternative but to procure the item from this particular source; and
    - A written plan for avoiding this situation in the future (e.g., develop a second source, bring the procurement in house, etc.)